

108TH CONGRESS
2D SESSION

H. R. 4736

To amend the Internal Revenue Code of 1986 to encourage the production of independent motion picture films in the United States.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2004

Ms. MCCARTHY of Missouri (for herself, Mr. RANGEL, Mr. BURTON of Indiana, Ms. SLAUGHTER, Mr. DOGGETT, Mr. KUCINICH, Mr. SCHIFF, Mr. MCINTYRE, Mr. MCGOVERN, and Ms. MILLENDER-MCDONALD) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to encourage the production of independent motion picture films in the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Independent Film
5 Small Business Job Creation Act of 2004”.

1 **SEC. 2. DEDUCTION FOR INDEPENDENT FILM PRODUCTION**
2 **INVESTMENTS.**

3 (a) IN GENERAL.—Part VI of subchapter B of chap-
4 ter 1 of the Internal Revenue Code of 1986 (relating to
5 itemized deduction for individuals and corporations) is
6 amended by adding at the end the following new section:

7 **“SEC. 199. INDEPENDENT FILM PRODUCTION INVEST-**
8 **MENTS.**

9 “(a) ALLOWANCE OF DEDUCTION.—

10 “(1) IN GENERAL.—In the case of a taxpayer
11 who holds a qualified investment during any portion
12 of the taxable year, there shall be allowed as a de-
13 duction for the taxable year an amount equal to the
14 applicable percentage of the qualified expenditures
15 relating to such investments.

16 “(2) APPLICABLE PERCENTAGE.—For purposes
17 of paragraph (1), the applicable percentage shall be
18 determined on the basis of the amount which bears
19 the same ratio to the qualified expenditures made
20 during the portion of the taxable year referred to in
21 paragraph (1) as the amount of the taxpayer’s quali-
22 fied investment in the eligible independent film pro-
23 duction entity bears to the aggregate qualified in-
24 vestment in such entity.

25 “(b) QUALIFIED EXPENDITURES.—For purposes of
26 this section—

1 “(1) IN GENERAL.—The term ‘qualified expend-
2 itures’ means amounts paid or incurred by an eligi-
3 ble independent film production entity for
4 preproduction, production, and post-production of a
5 qualified motion picture film.

6 “(2) POST PRODUCTION.—The term ‘post-pro-
7 duction’ means, with respect to any motion picture
8 film, distribution and promotion of such film.

9 “(3) DENIAL OF DOUBLE BENEFIT.—Except as
10 provided by subsection (a), qualified expenditures
11 shall be disregarded in determining—

12 “(A) the adjusted basis of any property
13 held at the entity level, and

14 “(B) any deduction allowed at the entity
15 level or at the partner or similar level.

16 “(c) QUALIFIED INVESTMENT.—For purposes of this
17 section—

18 “(1) IN GENERAL.—The term ‘qualified invest-
19 ment’ means any equity investment in an eligible
20 independent film production entity if—

21 “(A) such investment is acquired by the
22 taxpayer at its original issue (directly or
23 through an underwriter) solely in exchange for
24 cash,

1 “(B) substantially all of such cash is used
 2 by the eligible independent film production enti-
 3 ty for qualified expenditures, and

4 “(C) such investment is designated to be
 5 used for preproduction, production, and post-
 6 production of a qualified motion picture film by
 7 the eligible independent film production entity.

8 “(2) TREATMENT OF SUBSEQUENT PUR-
 9 CHASERS.—The term ‘qualified investment’ shall in-
 10 clude any equity investment which would (but for
 11 paragraph (1)(A)) be a qualified investment in the
 12 hands of the taxpayer if such investment was a
 13 qualified investment in the hands of a prior holder.

14 “(3) REDEMPTIONS.—A rule similar to the rule
 15 of section 1202(c)(3) shall apply for purposes of this
 16 subsection.

17 “(4) EQUITY INVESTMENT.—The term ‘equity
 18 investment’ means—

19 “(A) any stock (other than nonqualified
 20 preferred stock as defined in section 351(g)(2))
 21 in an entity which is a corporation, and

22 “(B) any capital interest in an entity
 23 which is a partnership.

24 “(d) ELIGIBLE INDEPENDENT FILM PRODUCTION
 25 ENTITY.—

1 “(1) IN GENERAL.—The term ‘eligible inde-
2 pendent film production entity’ means any domestic
3 corporation or partnership (and any person related
4 to such corporation or partnership)—

5 “(A) which is organized and operated for
6 the primary purpose of producing a qualified
7 motion picture film outside the formal studio
8 structure, and

9 “(B) which takes such film into
10 preproduction, production, and post production
11 through financial funding of its own money or
12 assets, private investors, financial institutions,
13 guarantees, presale advances, or distribution
14 contracts.

15 “(2) RELATED PERSON.—For purposes of para-
16 graph (1), a person is a related person to another
17 person if—

18 “(A) the relationship between such persons
19 would result in a disallowance of losses under
20 section 267 or 707(b), or

21 “(B) such persons are members of the
22 same controlled group of corporations (as de-
23 fined in section 1563(a), except that ‘more than
24 50 percent’ shall be substituted for ‘at least 80
25 percent’ each place it appears therein).

1 “(3) RELEASE OF FILM NOT TAKEN INTO AC-
2 COUNT.—For purposes of paragraph (1), whether a
3 motion picture film is released theatrically, directly
4 to video cassette, DVD, or any other format, tele-
5 vision or cable programming movie-of-the-week,
6 miniseries, or pilot production shall not be taken
7 into account.

8 “(e) QUALIFIED MOTION PICTURE FILM.—For pur-
9 poses of this section—

10 “(1) IN GENERAL.—The term ‘qualified motion
11 picture film’ means a motion picture film—

12 “(A) the budget of which is greater than
13 \$2,000,000 and less than \$20,000,000, and

14 “(B) not less than 95 percent of the wages
15 or self-employment income paid or incurred for
16 producing such film (including the
17 preproduction, production, and post-production
18 stages) is for services provided within the
19 United States or any of its possessions.

20 “(2) EXCEPTION.—The term ‘qualified motion
21 picture film’ shall not include any motion picture
22 film which contains actual sexually explicit conduct
23 (as defined by section 2257(h)(1) of title 18, United
24 States Code.

1 “(3) BUDGET.—The budget for a motion pic-
2 ture film—

3 “(A) shall not exceed the face amount of
4 the aggregate completion bonds issued with re-
5 spect to the motion picture film, and

6 “(B) shall include the preproduction, pro-
7 duction, and post-production stages of pro-
8 ducing such film.

9 “(4) WAGES; SELF-EMPLOYMENT INCOME.—

10 “(A) WAGES.—The term ‘wages’ has the
11 meaning given to such term by section 3121.

12 “(B) SELF-EMPLOYMENT INCOME.—The
13 term ‘self-employment income’ has the meaning
14 given to such term by section 1402.

15 “(5) INFLATION ADJUSTMENT.—In the case of
16 a taxable year after 2005, the dollar amounts con-
17 tained in paragraph (1)(A) shall each be increased
18 by an amount equal to—

19 “(A) such dollar amount, multiplied by

20 “(B) the cost-of-living adjustment deter-
21 mined under section 1(f)(3) for such calendar
22 year by substituting ‘calendar year 2004’ for
23 ‘calendar year 1992’ in subparagraph (B)
24 thereof.

1 Any increase under this subparagraph which is not
2 a multiple of \$1,000 shall be rounded to the next
3 lowest multiple of \$1,000.

4 “(f) RECAPTURE IN CERTAIN CASES.—

5 “(1) IN GENERAL.—If, at any time during the
6 5-year period beginning on the date of the original
7 issue of a qualified investment in a eligible inde-
8 pendent film production entity, there is a recapture
9 event with respect to such investment, then the tax
10 imposed by this chapter for the taxable year in
11 which such event occurs shall be increased by the
12 credit recapture amount.

13 “(2) RECAPTURE AMOUNT.—For purposes of
14 paragraph (1), the recapture amount is an amount
15 equal to the sum of—

16 “(A) the aggregate decrease in the deduc-
17 tions allowed to the taxpayer under this chapter
18 for all prior taxable years which would have re-
19 sulted if no deduction had been determined
20 under this section with respect to such invest-
21 ment, plus

22 “(B) interest at the underpayment rate es-
23 tablished under section 6621 on the amount de-
24 termined under subparagraph (A) for each
25 prior taxable year for the period beginning on

1 the due date for filing the return for the prior
2 taxable year involved.

3 No deduction shall be allowed under this chapter for
4 interest described in subparagraph (B).

5 “(3) RECAPTURE EVENT.—For purposes of
6 paragraph (1), there is a recapture event with re-
7 spect to an equity investment in a eligible inde-
8 pendent film production entity if—

9 “(A) such entity ceases to be a eligible
10 independent film production entity,

11 “(B) the proceeds of the investment cease
12 to be used as required of subsection (c)(1)(B),
13 or

14 “(C) such investment is redeemed by such
15 entity.

16 “(4) SPECIAL RULE.—Any increase in tax
17 under this subsection shall not be treated as a tax
18 imposed by this chapter for purposes of section 55.

19 “(g) BASIS REDUCTION.—The basis of any qualified
20 investment shall be reduced by the amount of any deduc-
21 tion determined under this section with respect to such
22 investment. This subsection shall not apply for purposes
23 of sections 1202, 1400B, and 1400F.

1 “(h) ELECTION TO HAVE CREDIT NOT APPLY.—A
 2 taxpayer may elect to have this section not apply for any
 3 taxable year.

4 “(i) REGULATIONS.—The Secretary shall prescribe
 5 such regulations as may be appropriate to carry out this
 6 section, including regulations—

7 “(1) which prevent the abuse of the purposes of
 8 this section, and

9 “(2) which impose appropriate reporting re-
 10 quirements.”.

11 (b) CONFORMING AMENDMENT.—Subsection (a) of
 12 section 1016 of such Code is amended by striking “and”
 13 at the end of paragraph (27), by striking the period at
 14 the end of paragraph (28) and inserting “; and”, and by
 15 adding at the end the following new paragraph:

16 “(29) to the extent provided in section
 17 199(g).”.

18 (c) CLERICAL AMENDMENT.—The table of sections
 19 for part VI of subchapter B of chapter 1 of such Code
 20 is amended by adding at the end the following new item:

“Sec. 199. Independent film production investments.”.

21 (d) EFFECTIVE DATE.—The amendments made by
 22 this section shall apply to investments made after Decem-
 23 ber 31, 2004.

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